

Exhibit B

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Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEW JERSEY

3 IN RE: VALSARTAN, LOSARTAN, AND : MDL NO. 2875

4 IRBESARTAN PRODUCTS LIABILITY :
LITIGATION, :
: THIS DOCUMENT RELATES TO :
ALL ACTIONS :
: ***RESTRICTED CONFIDENTIAL***5
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10 Veritext Virtual Zoom Videotaped
11 deposition of RENA M. CONTI, Ph.D., taken on Friday,
12 February 11, 2022, in Glenside, Pennsylvania,
13 commencing at 9:04 a.m. Eastern Standard Time,
14 before Jamie I. Moskowitz, a Certified Court
15 Reporter and Certified Livenote Reporter.

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1 It's -- it's explained. So in paragraphs 63 and 64,
2 I explain what I did for the defendant retailers for
3 unjust enrichment. I list, "Retailers profited from
4 the sale of at-issue valsartan products to consumers
5 at the point of sale. Profits are defined as
6 revenues minus cost for each at-issue valsartan
7 product sold by the defendant retailers from
8 January 1st until the at-issue valsartan products
9 were recalled in 2018 and 2019 for being adulterated
10 and misbranded."

11 I then have, again, a footnote where
12 we have established which of the products at-issue
13 and at what time periods. All I did was take the
14 information that was provided to me by the at-issue
15 retailers for the relevant time periods, the
16 relevant manufacturers and the relevant product
17 categories, and matched them with the states
18 relevant for the unjust enrichment damages and
19 summed them up.

20 I did the exact same thing for the
21 liability claims, and I think that is listed and
22 explained in my report, in the preceding section, in
23 Paragraphs 60, 61 and 62.

24 Q And what I'm trying to -- to
25 understand and make sure that I -- I follow, is what

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1 conclusion.

2 You may answer.

3 THE WITNESS: Thank you.

4 Allocation and apportionment is
5 outside of the scope of my report.

6 BY MS. KAPKE:

7 Q You would agree that they reflect the
8 same -- for a particular state and particular
9 manufacturer, they represent the same data which is
10 the full patient paid amount, correct?

11 MR. HONIK: Object to the form.

12 THE WITNESS: I disagree with that
13 characterization.

14 BY MS. KAPKE:

15 Q Correct it then, please.

16 MR. HONIK: Object to form.

17 You can answer.

18 THE WITNESS: Okay. So let's go back
19 to the basis of liability versus unjust
20 enrichment.

21 Liability is related to what was paid
22 at the point of sale. In this case, by the --
23 by the consumer and TPP, if we're taking this
24 from a theoretical perspective. And so the
25 full amount of retailer liability is the -- the

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1 full amount that -- that was paid by the
2 consumer and by the third-party payor at the
3 point of sale, and does not include offsets
4 such as rebates or discounts that might have
5 been applied later.

6 Whereas unjust enrichment, if you go
7 to Section C of my report, paragraph 64,
8 entails understanding what the retailer profits
9 from that sale are. And that would include,
10 again, in theory, what the customer paid, what
11 the third-party payor paid, inclusive, minus
12 the retailer costs.

13 Now, those costs, the retailers have
14 already taken out the dispensing fee, but one
15 can imagine there would be potentially other
16 costs of dispensing those specific products
17 that may be related to the point of sale, and
18 might include other offsets that could have
19 occurred.

20 I discussed that in Footnote 84 where
21 I say, "When calculating profits, the other
22 offsets may be removed from gross profit should
23 the jury or court find these to be reasonable
24 deductions." That is relevant to unjust
25 enrichment. It's not relevant to liability.

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1 Reporter, can you hear me okay, also?

2 THE COURT REPORTER: You're a little
3 low, but I can hear you.

4 MR. CAMPBELL: Okay. I pulled the
5 microphone as close as I can get it here, so I
6 will do the best I can.

7 BY MR. CAMPBELL:

8 Q So, Dr. Conti, you talked a lot
9 yesterday about your role as a professor, your
10 coursework, your class work. How much of that
11 coursework, that class work, involves
12 wholesaler-specific issues?

13 A I have spent some time understanding a
14 wholesaler's role in this industry. I have had the
15 pleasure of working with some folks at Cardinal and
16 at AmerisourceBergen and in multiple contexts.

17 THE COURT REPORTER: Did you say
18 -- did you say Amerisource?

19 THE WITNESS: AmerisourceBergen.

20 THE COURT REPORTER: Okay.

21 BY MR. CAMPBELL:

22 Q In what sort of context --

23 A And Cardinal.

24 Q Thank you.

25 A Yeah.

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1 Q In what context did you work with
2 those folks at Cardinal and AmerisourceBergen?

3 A Again, just in the normal course of my
4 business, I spend a lot of time trying to understand
5 how this industry works and the role wholesalers has
6 is part of the -- part of the ecosystem.

7 Q Were you --

8 A So I can be -- I can be more specific.
9 I've been on -- I've been on panels and conferences.
10 I've been in closed-door meetings, discussing
11 various issues related to reimbursement, financing,
12 organization, regulation, where wholesaler
13 representatives have been there. And I know
14 something about the wholesaler data that -- that
15 wholesalers such as Cardinal and AmerisourceBergen
16 maintain. What else should I tell you?

17 I teach about the role of wholesalers
18 in this ecosystem and have had the pleasure of
19 reviewing shareholder reports of AmerisourceBergen,
20 Cardinal and other public wholesalers operating in
21 the U.S. market.

22 Q And so you mentioned that earlier this
23 morning. Those are the public finance reports that
24 you reviewed either last night or this morning?

25 A No, I mean -- so, again, I'm talking

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1 generally. So part of my course that I teach on
2 Strategy in the Pharmaceutical Industry requires
3 that my students do shareholder report analysis.
4 And we focus both on pharmaceutical manufacturers,
5 but also other entities that are important in the
6 supply chain, which include the wholesalers and also
7 include some of the retailers that we've talked
8 about.

9 There are a handful of shareholder
10 reports that I looked at over the past couple of
11 days that include Mylan, Teva -- I think maybe one
12 more of the defendant manufacturers. And I
13 certainly looked over gross revenues of the retailer
14 pharmacies as well.

15 Q Do you remember any specific
16 individuals at Cardinal or AmerisourceBergen at any
17 of those conferences or panels when you were there
18 with them?

19 A Not off the top of my head. I am in
20 email correspondence with a number of former
21 executives working on some work related to private
22 labeling activities for some drugs that went into
23 short supply, but not ones that are related in this
24 matter. I'm more than happy to tell you who those
25 are. I just don't have them off the top of my head.

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1 BY MR. CAMPBELL:

2 Q Were there any confidentiality
3 agreements related to that data that you were shown?4 A I -- in at least one interaction, I
5 did sign a confidentiality agreement. But it wasn't
6 for any of the wholesalers that are named in this.7 Q You said that was a screen share. So
8 did you take any documents back with you? Do you
9 have any documents on your computer or on your desk
10 or anything like that?

11 A No. I wish, but no. Yeah.

12 Q And was it that experience and looking
13 at that data that informed your opinions here about
14 the damages calculation as to wholesalers?15 A Well, we talked about this yesterday,
16 that -- I mean, I've spent every day for the past
17 20 years thinking about how this -- how this system
18 works, and specifically how prescription drugs go
19 from base ingredients to -- to API to fill and
20 finish, manufacturing, you know, through the supply
21 chain, which includes distributors and then,
22 ultimately, to reach our pharmacies or to hospitals
23 or to medical groups and then, finally, to be
24 infused, injected or dispensed to consumers.

25 Certainly, the role of wholesalers is

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1 a very important one in this field, and one that I'm
2 involved -- I routinely understand and -- and am
3 thinking about in -- in my academic roles. So
4 therefore, by definition, it informs how I think
5 about their role in this case. But...

6 Q Got you.

7 A I actually haven't spent that much
8 time writing about distributors and wholesalers, in
9 part because the data is all --

10 THE COURT REPORTER: The what?

11 THE WITNESS: The data is opaque.

12 It's not normally what we -- I have access to
13 in my -- in the course of my daily research --
14 research.

15 BY MR. CAMPBELL:

16 Q You mentioned yesterday that the
17 report, which is, I think, Exhibit 5, that that
18 report took you, I think you said many months to
19 write. Do you remember that?

20 A Yes.

21 Q Okay. And we looked at some of the
22 hours yesterday, and let's just say dozens of hours
23 to write your report, right?

24 A I don't understand your question. I'm
25 sorry.

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1 A Yeah. Okay. So -- and are you asking
2 about payments that Hetero made to their distributor
3 or --

4 Q I mean --

5 A -- to other --

6 THE COURT REPORTER: Okay. I cannot
7 -- I can't have you both speaking at one time.
8 It's too fast, and I can't do it.

9 MR. ABRAHAM: Sorry. My fault.

10 BY THE WITNESS:

11 Q I mean, not necessarily payments made
12 by Hetero's manufacturer, but made by Hetero's
13 United States repackager or distributor.

14 A So do you mean that there were --
15 there were refunds that were made by the distributor
16 to consumers or to third-party payors for recalled
17 products?

18 Q That's a fair hypothetical. So in
19 other words, yes. Did you, in any way in your
20 damages analysis, consider if those had occurred and
21 what the impact would be in your damages
22 calculation?

23 A So, again, my -- my damage calculation
24 is flexible and could accommodate the possibility of
25 refunds that were made for recalled or contaminated

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1 product to end-payors. I did not have that data for
2 this analysis that I conducted. My understanding is
3 that whether or not that would be ultimately
4 included in damages for settlement purposes, that is
5 something that would be settled by counsel, court or
6 the judge.

7 Q Okay. Did your damages analysis in
8 any way address the charge backs, rebates, bill
9 backs, administrative fees or cash discounts
10 attributable to sales of Hetero's valsartan that was
11 allegedly contaminated or unpure as a result of the
12 nitrosamine?

13 A That's a really compound question. So
14 let's take that apart.

15 So if discounts were given to
16 consumers at the point of sale, then by definition,
17 they are included in my damages because they would
18 offset the actual payment that patients made at the
19 pharmacy counter. And that would be included in the
20 IQVIA data that's listed in my report.

21 Q Did you analysis -- I'm sorry. Go
22 ahead. I didn't mean to interrupt.

23 A No. It's okay.

24 We don't have rebate data. That is
25 something that is confidential and available from

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1 the manufacturers themselves. From a theory of
2 liability, rebates are not necessarily things that
3 would be considered to be offsets, because injury
4 occurs at the point of sale, and rebates are paid
5 after the products are sold at some other point in
6 time in aggregate and may not be directly related to
7 any specific transaction.

8 But to the extent that Hetero or their
9 agents negotiated prices with third-party payors,
10 that varied by product, they would be in the IQVIA
11 data. Because, by definition, the IQVIA data is
12 providing the price that was actually paid by the
13 third-party at the pharmacy counter for those
14 products.

15 So if discounts were given, if Hetero
16 gave discounts to, I don't know, let's say, take one
17 of the third-party payors in this case,
18 prospectively, that would be in my calculation -- in
19 the damages that are calculated here.

20 THE COURT REPORTER: And what?

21 THE WITNESS: That would be in the
22 damages that are calculated here.

23 MR. ABRAHAM: Okay. Subject to
24 receiving the information that you agreed to
25 provide, I have no further questions for the

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1 witness. Thank you very much for your time.

2 MR. HONIK: Eric, but for the benefit
3 of the record, I just would like to note that
4 the backup data that you asked of Dr. Conti
5 that pertains to Hetero and Table 1, the
6 aggregate of damages, was provided to you and
7 all defense counsel concomitantly with our
8 serving our class cert motion and brief. So if
9 you'll do nothing more than look at the files
10 that we served, you'll find the data points
11 that you're looking for there.

12 MR. ABRAHAM: Let's have this
13 discussion offline. I don't want to consume
14 the doctor's time.

15 MR. HONIK: Understood. I wanted the
16 record to reflect that it's already been served
17 on counsel.

18 Next -- next up?

19 MR. KNEPPER: Yes. This is
20 Matthew Knepper from Husch Blackwell. I will
21 go next.

22 THE WITNESS: I'm sorry. From where?

23 MR. KNEPPER: Husch Blackwell. I
24 represent Express Scripts.

25 THE WITNESS: -- as the pharmacy, just

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1 am attaching as an exhibit and putting in.

2 And I will provide it to the court
3 reporter as an exhibit. And we certainly do
4 not waive anything that is not in the public
5 court file in that case.

6 (Whereupon, Exhibit Conti 8 was marked
7 for Identification.)

8 MR. HONIK: Anything else?

9 MR. OSTFELD: That's it for me.

10 MR. HONIK: We're concluded. Thank
11 you, Jamie.

12 (Whereupon, the deposition concluded
13 at 5:08 p.m.)

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